

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1360 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SONALBEN RAMESHCHANDRA DESAI

Versus

AJITBHAI REVANDAS PATEL

Appearance:

MR DS SHAH for Petitioner

UNSERVED for Respondent No. 1

MR. MUKESH PATEL, ADDL. PUBLIC PROSECUTOR for
Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/11/97

ORAL JUDGEMENT

Respondent No. 1 Ajitbhai Revandas Patel is accused in original complaint - criminal case No. 2145 of 1993 pending with the Metropolitan Magistrate, Court No. 19, Ahmedabad. He was granted a bail by the said court. However, on an application filed by the present petitioner who is said to be daughter-in-law of the

accused, the conditions of the bail were modified and one of the conditions imposed was that he will not leave India without the permission of the court. The said accused left India without permission of the Court and therefore the present petitioner made an application before the court of Metropolitan Magistrate, Ahmedabad for cancellation of bail. The said application was rejected. Hence, a revision was preferred which was eventually heard by the City Civil and Additional Sessions Judge at Ahmedabad. The Additional Sessions Judge, Court No. 11, found thus:

"It is true that lower court has imposed the condition not to leave India without prior permission of this court. He had applied for the permission however, the application was not decided and as such it may be said technically that permission was not granted. If we construe the condition rigidly it may be said that without permission he had left India and thereafter the application was given."

The learned judge having observed aforesaid rejected the revision application on the locus and other ground.

I have heard learned counsel for the petitioner. As the respondent has left India and he is not available on the address given at the time of furnishing bond before the Metropolitan Magistrate, this matter is heard ex-parte. It is amazing that the learned Additional Sessions Judge, after having arrived at the conclusion that there is a breach of condition of bail rejected the revision application on the ground of locus and has further dealt with the matter very lightly by saying that there is a technical breach, as the accused had made an application seeking permission to leave the country but no specific order was passed. If the respondent No. 1 without waiting for the order left the country, he has done on his own peril. The view taken by the Addl. Sessions Judge is illegal and unjustified.

In view of this, Special Criminal Application No. 1360 of 1997 is allowed and the bail granted to the accused respondent No. 1 stands cancelled. The Metropolitan Magistrate is directed to issue standing warrant to arrest respondent No. 1 as and when he returns to this country. Rule is made absolute. Direct service is permitted.

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